147 U.S. 685

# RECORD, CASE NO. 15164.

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM NO., 1194.

THE UNITED STATES, APPELLANT,

vs.

MARION ERWIN.

APPEAL FROM THE COURT OF CLAIMS.

**FILED OCTOBER 7, 1892.**

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1 IN THE COURT OF CLAIMS.

MARION ERWIN
*vs.*
THE UNITED STATES. } No. 17098.

I.—*Petition filed August* 20, 1891.

*To the honorable the Court of Claims:*

Your petitioner, Marion Erwin, a citizen of the United States, and a resident of Macon, in the State of Georgia, respectfully shows:

That from May 1 to December 31, 1889, he was United States attorney for the southern district of Georgia, duly qualified and acting. During said time petitioner rendered services in sixty-eight separate and distinct cases on separate and distinct days in personally conducting examinations before United States commissioners, of persons charged with crime.

Petitioner made up his accounts for such services, charging the fees authorized by section 824 of the Revised Statutes, and said accounts, duly verified by his oath, were submitted to the United States court for
2 examination and approval, and an order was entered approving the same as just and according to law.

Said accounts were then presented to the accounting officers of the Treasury for payment, and they refused to allow the following:

Conducting examinations before commissioners on days when attendence upon court is charged..... ..... .....$215.00

Petitioner further states that the said claim has not been assigned or transferred in whole or in part; that he is the sole owner thereof; that the claim is correct and just; that no part of the same has been paid.

Wherefore he prays judgment for two hundred and fifteen dollars.

MARION ERWIN.

By his attorneys,

DUDLEY & MICHENER.

DISTRICT OF COLUMBIA:

Before me, a notary public in and for the District of Columbia, appeared Louis T. Michener, of the firm of Dudley & Michener, who, being duly sworn, deposes and says that he is attorney for the above-named petitioner, authorized by warrant of attorney duly executed by said petitioner, and fileed herewith, to verify said petition, and that the facts therein stated are true to the best of his knowledge and belief.

LOUIS T. MICHENER.

Subscribed and sworn to before me this 20th day of August, A. D. 1891.

[SEAL.]

E. L. WHITE,
*Notary Public, District of Columbia.*

3 II.—*Traverse filed August* 28, 1891.

And now comes the Attorney-General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

JOHN B. COTTON,
*Assistant Attorney-General.*

4 III.—*Findings of fact and conclusion of law filed May* 23, 1892.

This case having been heard before the Court of Claims, the court, upon the evidence, finds the facts to be as follows:

I. The claimant, Marion Erwin, is now and since March 30, 1889, has been United States attorney for the southern district of Georgia.

II. From May 1 to December 31, 1889, the claimant, as such attorney, rendered services in sixty-eight separate and distinct cases, on separate and distinct days, personally conducting examinations before U. S. commissioners of persons charged with crime.

III. Claimant made up his accounts for said services, charging a fee of $5 for each days's examination, and the same were presented to and approved by the United States district court in the manner required by the act of February 22, 1875, Supplement to Revised Statutes, 65.

IV. Said accounts were then presented to the accounting officers of the Treasury, and they disallowed the charges for conducting examinations before commissioners on days when attendance upon court was charged, 43 days, at $5..... $215.00

CONCLUSION OF LAW.

Upon the foregoing findings of fact a majority of the judges of the court decide as conclusion of law:

The claimant is entitled to recover the sum of $215, notwithstanding that he was paid a like sum for services rendered in court upon the same days, for which the above per diem fees are allowed.

BY THE COURT.

5 IV.—*Judgment of the court.*

MARION ERWIN
*v.*
THE UNITED STATES. } No. 17098.

At a Court of Claims held in the city of Washington on the 23d day of May, A. D. 1892, judgment was ordered to be entered as follows:

The court on due consideration of the premises find for the claimant, and do order, adjudge, and decree that the said Marion Erwin do have

and recover of and from the United States the sum of two hundred and fifteen dollars.

BY THE COURT.

(The court filed no opinion in this case.)

6 V.—*Application of defendants for and allowance of appeal.*

MARION ERWIN
*v.*
UNITED STATES. } No. 17098.

From the judgment rendered in the above-entitled cause on the 23d day of May, 1892, in favor of the claimant, the defendants, by their Attorney-General, on the 27th day of June, 1892, make application for, and give notice of, an appeal to the Supreme Court of the United States.

JOHN B. COTTON,
*Assistant Attorney-General.*

Filed and allowed in open court.
June 27, 1892.

WILLIAM A. RICHARDSON,
*Chief Justice.*

7 IN THE COURT OF CLAIMS.

MARION ERWIN
*vs.*
THE UNITED STATES. } No. 17098.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court, and the conclusion of law thereon, of the judgment of the court, and of the application for and allowance of an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, this 6th day of October, 1892.

[SEAL.]

JOHN RANDOLPH,
*Asst. Clerk Court of Claims.*

(Indorsement on cover:) Case No. 15164. Court of Claims. Term No. 1194. The United States, appellant, vs. Marion Erwin. Filed October 7th, 1892.

147 U.S. 685

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FILED.
DEC 29 1892
JAMES H. McKENNEY,
CLERK.

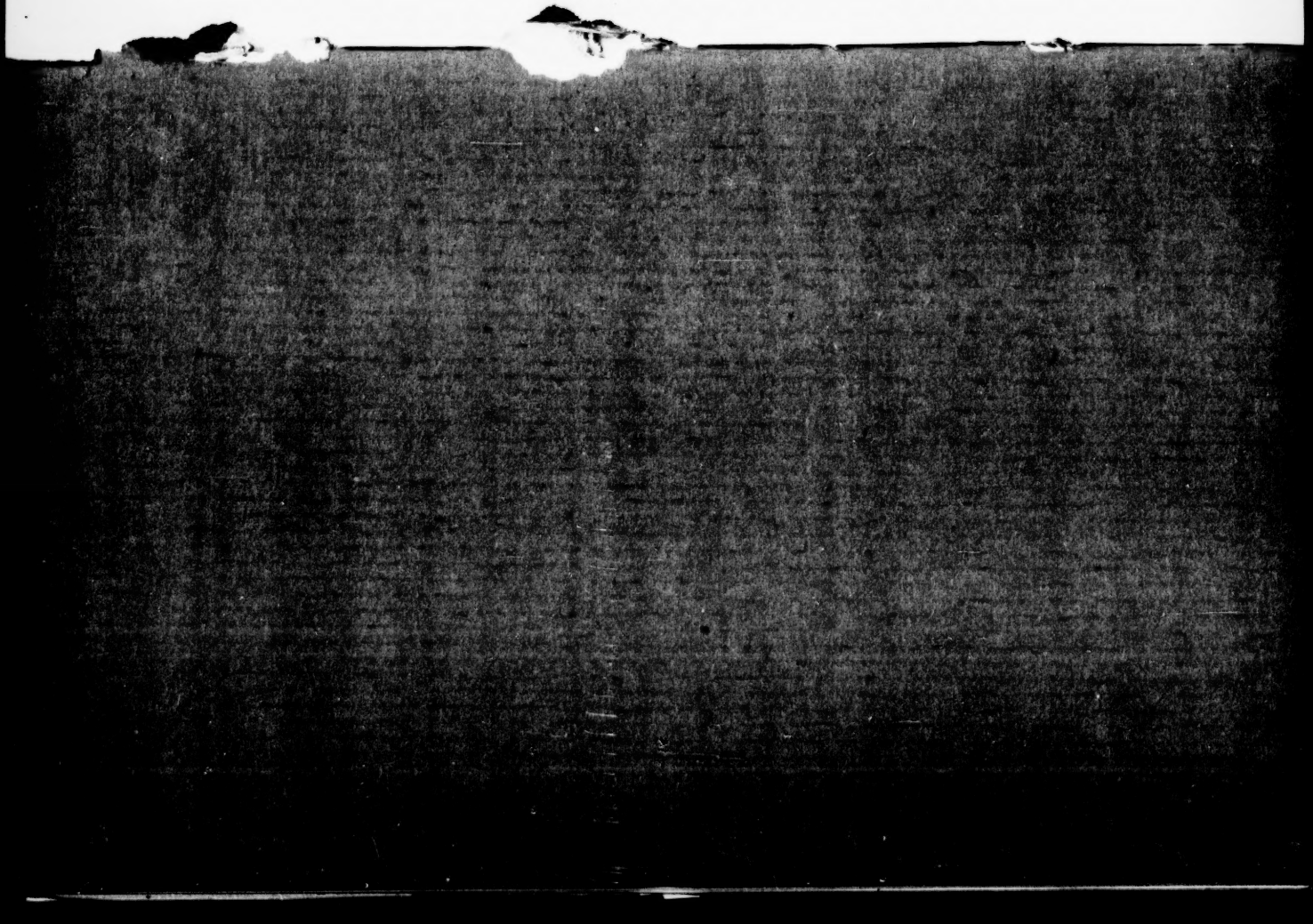
# In the Supreme Court of the United States.

OCTOBER TERM, 1892.

THE UNITED STATES, APPELLANT,
*vs.*
MARION ERWIN.
} No. 1194.

*APPEAL FROM THE COURT OF CLAIMS.*

## BRIEF FOR APPELLANT.



# In the Supreme Court of the United States.

OCTOBER TERM, 1892.

THE UNITED STATES, APPELLANT,
*vs.*
MARION ERWIN.
No. 1194.

*APPEAL FROM THE COURT OF CLAIMS.*

## BRIEF FOR APPELLANT.

The case is fairly stated in the brief for appellee, and in the findings of the Court of Claims and its conclusions of law.

### ASSIGNMENT OF ERRORS.

1. The Court of Claims erred in its conclusions of law, based on the facts found, that appellee was entitled, as United States attorney, to recover from the United States the sum of $215 as per diem fees for conducting examinations before commissioners of the United States circuit courts where he charged and received per diem fees for attendance in a court of the United States for the same days.

2. The Court of Claims erred in ordering, adjudging, and decreeing that appellee should have and receive of and from the United States the sum of $215 as per diems for conducting said examinations before commissioners.

## ARGUMENT.

The findings do not show, but it may be inferred, and it is admitted, for appellant, that the examinations before the commissioners were examinations of persons charged with crime within the meaning of section 824 of the Revised Statutes.

### FIRST ASSIGNMENT OF ERROR.

This appeal presents the following question:

Is a district attorney of the United States entitled, under the "fee bill," sections 823 and 824 of the Revised Statutes, to five dollars a day for the time necessarily employed in examinations conducted by him before a commissioner of the United States circuit court, of persons charged with crime, when he has been allowed and paid five dollars a day for the same days for attendance in a court of the United States on the business of the United States?

Among the fees prescribed for district attorneys in the fee bill are these:

> For examination by a district attorney, before a judge or commissioner, of a person charged with crime, five dollars a day for the time necessarily employed.
>
> For each day of his necessary attendance in a court of the United States on the business of the United States * * * five dollars for each day of the term.

The case of *Erwin* v. *The United States* (37 Fed. Rep., 470, 478) does not appear to settle the present question. The claimant in that case, Marion Erwin, was clerk of

the United States district court for the southern district of Georgia. He charged in his account as clerk six days' necessary attendance in the district court held at Macon, at the October term, 1887. The First Comptroller disallowed the charge "because the same days were charged and allowed him as commissioner of the circuit court." Speer, J., who had a long experience as district attorney before his elevation to the United States district bench, decided the case on the ground that claimant held two compatible offices, the duties of which could be performed on the same day; and as it was proven that the duties were so performed, he gave claimant judgment for that item of the account, according to the doctrine of the Supreme Court, announced in *United States* v. *Saunders* (120 U. S. R., 126) and prior cases.

Under proper construction of the fee bill, it will appear that it was not the intention of Congress when enacting it, on February 26, 1853, to allow any district attorney, clerk, or marshal *duplicate per diem fees under the fee bill*. That act expressly says (Rev. Stat., 831) that—

> No per diem or other allowance shall be made to any district attorney, clerk of a circuit court, clerk of a district court, marshal, or deputy marshal for attendance at rule days of a circuit or district court, and when the circuit and district courts sit at the same time no greater per diem or other allowance shall be made to any such officer than for an attendance on one court.

It is well known to the Supreme Court that the duties performed by the United States attorneys in the district and circuit courts require a higher order of ability and

greater knowledge of the law than hearings before committing magistrates. Yet when the district attorney argues an important question in the district court in the forenoon before a district judge, and another important question in the circuit court in the afternoon of the same day before the associate justice of the United States Supreme Court and the circuit judge, he can be allowed but one per diem for attendance in both courts. Can it be possible that when Congress expressly limited the per diem to one fee in such a case, it was intended to allow the district attorney duplicate per diem pay under the fee-bill for far less important services?

In this case we must look to the spirit rather than the letter of the law, according to the maxim, *Qui hæret in litera, hæret in cortice.*

The true line of construction of every act of Congress is to consider what is its fair meaning, and to expound it differently from the letter, in order to preserve the intent, when adherence to the letter would subvert the intent. If we read the fee bill according to this canon, it will be difficult to discover anything in its provisions beyond the mere letter of the law, which would authorize a judgment of recovery for the per diem fees claimed in the petition. The services claimed for were, no doubt, rendered at the place of holding the court of the United States. The claimant was paid per diem fees for attending the business of the United States in that court on the same days he attended to the business of the United States before the commissioner. We insist that as the statute expressly denies duplicate per diem for superior services rendered in

two United States courts on the same day, it must necessarily be implied that Congress intended to fix one per diem as the fee for inferior services, to wit, attendance in one court and before a commissioner on the same day, because the mischief to be guarded against was the duplication of per diem fees.

SECOND ASSIGNMENT OF ERROR.

The judgment is erroneous not only for the foregoing reasons, but also for the following reason:

The law limits the compensation of the United States attorneys to a maximum rate of $6,000 per annum. Neither the petition, the pleadings, nor the findings of fact show that this rate would not be exceeded by the judgment in this suit. The question here presented has been discussed in the brief for appellant in *United States* v. *Fletcher*, No. 783, October term, 1892, pending in the Supreme Court. It is unnecessary to occupy the time of the court by repeating the discussion here, as both cases will be submitted at the same time under Rule 20.

It is respectfully submitted that the decree of the court below should be reversed and the petition ordered dismissed.

F. BRANNIGAN,
*Assistant Attorney.*

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JAMES H. McKENNEY,
CLERK.

IN THE

# Supreme Court of the United States.

OCTOBER TERM, 1892.

*No. 1194.*

**THE UNITED STATES, Appellant,**

**vs.**

**MARION ERWIN.**

**(Appeal from the Court of Claims.)**

# BRIEF FOR APPELLEE.

WM. W. DUDLEY,
LOUIS T. MICHENER,
RICH'D R. McMAHON,
*Attorneys for Appellee.*

WASHINGTON:
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1892.

IN THE

# Supreme Court of the United States.

OCTOBER TERM, 1892.

| | |
|---|---|
| THE UNITED STATES, APPELLANT,<br>*v.*<br>MARION ERWIN. | *No.* 1194. |

(*Submitted under the 20th Rule.*)

## I. STATEMENT OF THE CASE.

The appellee, Marion Erwin, is the United States Attorney for the Southern District of Georgia, and has held such office from March 30, 1889 (Record, Finding I, p. 2).

From May 1 to December 31, 1889, the appellee, as such attorney, rendered services in sixty-eight separate and distinct cases, on separate and distinct days, personally conducting examinations, before U. S. Commissioners, of persons charged with crime. He made up his accounts for said services, charging a fee of five dollars for each day's examination, and they were submitted to and approved by the United States District Court in the manner required by the act of February 22, 1875 (Findings II, III, p. 2). The accounts were then presented to

the accounting officers of the Treasury, who disallowed the charges for conducting examinations before Commissioners on days when attendance upon court was charged, 43 days, at $5.00 each, amounting to $215.00 (Finding IV).

II. Bail.

The Attorneys' fee bill, section 824, Rev. Stats., recognizes the distinction between a proceeding before a Commissioner for the purpose of holding to bail and a session of a court of the United States. This distinction is clearly and pointedly made in the 7th, 8th, and 9th paragraphs of the section. Paragraph 7 provides: "For examination by a district attorney, before a judge or commissioner, of persons charged with crime, five dollars a day for the time necessarily employed."

Paragraph 8 provides: "For each day of his necessary attendance in a court of the United States, on the business of the United States, * * * five dollars." * * *

The service for which compensation is provided by the 7th clause is for conducting *examinations* of persons charged with crimes before Commissioners, and five dollars a day for the time necessarily employed in making such examinations is the measure of his compensation for that specific service.

On the other hand, the service for which compensation is provided by the 8th clause is for *attendance* upon a court of the United States on the business of the United States, and five dollars a day for that court day is the measure of his compensation for such *attendance* on the court.

It was held by Mr. Justice Story that even a District Judge, when sitting as a committing magistrate, did not hold a court.

U. S. *v.* Clark, 1 Gall., 497.

U. S. *v.* Case, 8 Blatchf., 250.

The right of the District Attorney to charge and receive compensation "for *examination*, before a judge or commissioner, of persons charged with crime," on days when he charges for *attendance* upon a circuit or district court, is no more affected by such attendance than his right to charge a docket fee for a trial before the court on the same day for which a per diem fee for attendance on court is charged.

The fee for *examination* before a commissioner is as distinct from the fee for *attendance* upon court as is the character of the services themselves.

The respective services are, therefore, entirely distinct, and for the performance of each the statute prescribes a specific fee. (Erwin *v.* United States, 37 Fed. Rep. 479.)

And, as each service is wholly independent of the other, so the clause of the fee bill allowing a fee for the one is wholly independent of and unaffected by the distinct clause allowing a fee for the other. Each service being of such character that both can be performed on the same calendar day, it cannot affect the attorney's right to pay for each that the compensation provided therefor is measured by a per diem. The statute stands to the officer as a contract with the Government.

If A should contract with B in writing to pay him five dollars per day for one service and two dollars per day for the performance of another service, each being of a character that both could be performed on the same day, it would not for a moment be contended that A would not be liable to pay the per diem for each service when both were performed on the same day.

It is only by following the true line of construction of the statute to ascertain its fair meaning that the intent of Congress will *not* be subverted. The statute, on its very face, manifests the intent of Congress, which was that a

District Attorney should have, for *attendance* upon court five dollars a day, and for another service wholly and radically distinct—examination before a commissioner of persons charged with crime—five dollars a day.

Among the established rules of construction are these:

"The intention of the lawgiver and the meaning of the law are to be ascertained by viewing the whole and every part of the act. One part of the statute must be so construed by another that the whole may, if possible, stand; and that if it can be prevented *no clause, sentence, or word* shall be superfluous, *void*, or *insignificant*." (Broom, Leg. Max., 7th Am. ed., 585; Stowel *v.* Lord Zouch, Plowd. 365; Doe dem. Bywater *v.* Brandling, 7 B. and C. 643; Co. Litt. 381 a; Wing. Max. 167; 8 Rep. 236; Hix's and Gott's case, 4 Leon. R. 248; 2 Inst. 173; Potter's Dwarris, Stats. 189; Sedgwick, Stats. 2 ed. 212.)

"Words in a statute are never to be construed as unmeaning and surplusage if a construction can be legitimately found which will *give force to* and preserve *all the words* in the act." (Potter's Dwarris, 179, note 1; Leversee *v.* Reynolds, 13 Iowa, 310; Hartford Bridge Co. *v.* Union Ferry Co. 29 Conn. 210.)

It is the duty of the court to give effect, if possible, to every clause and word of a statute, avoiding, if it may be, any construction which implies that the legislature was ignorant of the meaning it employed.

Montclair *v.* Ramsdell, 107 U. S. 152.

Under these rules, effect must be given as well to paragraph 7 as to paragraph 8 of the statute. As each requires the performance of a specific duty, independent of any other, and provides a specific fee for that duty, it must be held that each has a meaning.

There is nothing in section 831 of the Revised Statutes, invoked by counsel for the Government in the court below,

which in any way affects the appellee's right to compensation for *examinations* before a commissioner. The section provides that—

"No per diem or other allowance shall be made to any district attorney, clerk of a circuit court, clerk of a district court, marshal, or deputy marshal for *attendance at rule days of a circuit or district court*, and when the circuit and district courts *sit at the same time* no greater per diem or other allowance shall be made to any such officer than for an attendance on one court."

The twofold purpose of that statute was to prohibit District Attorneys, Clerks of courts, Marshals, and deputy marshals receiving *any* allowance for *attending* court *on rule days*, and to allow them one per diem only for attendance on court when the circuit and district courts sat at the same time. "We hold," said the counsel for the Government, "that as Congress expressly denied duplicate per diems for superior services rendered in two United States courts on the same day, it must necessarily *be implied* that Congress intended to fix one per diem as the fee for inferior services, to wit, attendance in one court and before a commissioner on the same day, because the mischief to be guarded against was the duplication of per diem fees."

The "mischief to be guarded against was the duplication of per diem fees" *for the same service*—attendance upon two courts when both were in session at the same time.

"When the language of a statute, read in the order of clauses as passed, presents no ambiguity courts will not attempt by transportation of clauses, and from what it can be ingeniously argued was a general intent to qualify, by construction, the meaning."

Doe *v.* Considine, 6 Wall. 458.

In the case of Harmon *v.* United States (43 Fed. Rep., p. 560), which involved, among other things, plaintiff's fees for travel on a writ of commitment or removal, in addition to fees for transportation for himself and the prisoner, the court, Mr. Justice Gray delivering the opinion, held that the clause of the fee-bill allowing travel on a writ was entirely independent of the clause allowing fees for transportation of the officer and prisoner, and that while the officer had the prisoner in custody he was entitled both to transportation for himself and prisoner and to travel in going to serve a warrant of removal or commitment. The court held that each of the clauses had a meaning; that it provided a specific, fixed, definite fee for the performance of a specific duty; that it was unaffected by the other clause providing for another service.

So it is in the case at bar, and to hold otherwise is to maintain that one or other of the two clauses of the statute, providing fees for services absolutely unaffected by any other service, is wholly meaningless.

The case is clearly within the spirit, purpose, and letter of the statute, which is its own expositor. The statute is plain, certain, and unambiguous, and no doubt arises from its own terms as to its scope and meaning. The language is sufficient evidence of the intent of the lawmakers, and therefore the statute is the proper guide.

United States *v.* Hartwell, 6 Wall. 395.

St. Paul, Minn. & Manitoba R.R. Co. *v.* Phelps, 137 U. S. 529.

It is respectfully submitted that the judgment of the Court of Claims should be affirmed.

WM. W. DUDLEY,
LOUIS T. MICHENER,
RICH'D R. McMAHON,
*Attorneys for Appellee.*